National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: May 30, 1997

TO: James J. McDermott, Regional Director, Region 31

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Inland Truss Inc., Case 31-CA-22626

530-3067-1500, 530-3067-5000, 530-3067-6700

This Section 8(a)(5) case was submitted for advice on whether authorization cards containing the names of the District Council and International may be used by the affiliated Local Union as proof of majority designation of that Local, and whether the Employer's examining those cards arguably showing majority representative status thereby obligated the Employer to bargain with the Local.

We conclude, in agreement with the Region, that the charge should be dismissed, but solely on the ground that the Employer's mere examination of the authorization cards was insufficient to incur a bargaining obligation.

On March 18, 1997, when the parties first met, the Employer's President allegedly initially stated that he knew that the Union represented a majority.(1) After the Employer allegedly made that statement, the Union gave the Employer some 32 authorization cards and the Employer casually examined the top three or four cards. The Employer then stated its view that it had 60-70 employees in the unit and affirmatively stated that it would not recognize the Union.

The Union thereafter procured additional cards bringing its total to around 38 cards. On April 3, the Employer's Vice President examined these cards and suggested that two of them were not valid. At an April 7 meeting between the parties, the Union again demanded recognition and asked the Employer if it wanted to see the cards. The Employer then examined the cards again. When the Union asked whether employee records could be used to verify the cards, or whether the employees themselves could be asked to verify their cards, the Employer stated that it didn't want to do that. The parties then discussed whether the Employer was paying wages and benefits comparable to those of its nearby chief competitor who was a Union signatory. The Employer asked the Union to provide that information and further stating that it was still considering whether to accord recognition. The Union asserted that by looking at the Union's cards the Employer had already recognized the Union.

An employer may decline to accord recognition "notwithstanding that the union predicates its assertion upon an adequate showing of signed authorization cards..."(2) An employer may otherwise become obligated to recognize the union if it agrees to accord recognition based upon the cards,(3) or if it "undertakes a determination which he could have insisted be made by the Board" and independently verifies the union's majority.(4) Finally, an employer may de facto accord recognition by agreeing to commence negotiations after the union claims and the employer concedes majority status.(5)

In sum:

an employer has voluntarily recognized a union if the employer has agreed to recognize the union upon proof of majority status and the union's majority status has been demonstrated. The key to voluntary recognition in that circumstance is the commitment of the employer to bargain upon some demonstrable showing of majority. [Note 6: If an employer agreed to recognize a union on proof of its majority status through a card check, it is bound by the card check results and violates the Act if it thereafter refused to recognize the union or withdraws recognition.] A commitment to enter into negotiations ... is also an implicit recognition of the union.

We find it unnecessary to reach the issue of whether the Union appropriately used cards designating the District Council and

International because there is insufficient evidence that the Employer had "recognized the Union or committed itself (impliedly or otherwise) to bargain."[(6)]

In Trevose Family Shoe Store, the union advised the employer that it was authorized by a majority of its employees and was requesting recognition. The employer asked if the union had something to show for its claimed majority. The union handed authorization cards to the employer stating that the employer's request meant that the employer was agreeing to recognize and acknowledge the union's majority based upon the union's cards. The employer examined the cards and stated that it looked like the union had a clear majority. When the union then asked the employer to sign a recognition agreement, the employer declined to do so. The ALJ, adopted by the Board, found that the employer had not impliedly agreed to accord recognition based upon the cards. The ALJ noted that the union gave the employer the cards before the employer could consent to the union's unilaterally announced terms, viz., that the employer was thereby agreeing to accord recognition if the cards showed a majority. The ALJ noted that the employer otherwise made no attempt to verify the cards and merely thumbed through them two times.

Trevose Family Shoe Store essentially controls the instant case. Here as in that case, there is insufficient evidence that the Employer agreed to recognize the Union based upon its authorization cards. At best, the Employer conceded the Union's majority at the initial meeting before the Union proffered its cards. That concession is open to serious doubt, however, and the Employer in any event later made clear that it was not according recognition based upon the cards. Nor did the Employer impliedly recognize the Union by itself verifying the cards,[(7)] by agreeing to commence negotiations, or by actually negotiating with the Union. At the parties' final meeting, the Employer merely requested some information from the Union while repeating that it was still considering whether to accord recognition.

In sum, we agree that the Region should dismiss the

charge on the basis that the Employer did not expressly nor impliedly accord the Union voluntary recognition.

B.J.K.

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[1] We note that two of the three Union representatives at this initial meeting dispute the third representative who alone alleges that the Employer initially admitted that it knew the Union represented a majority.

[2] Sullivan Electric Company, 199 NLRB 809 (1972); Linden Lumber Division v. NLRB, 419 U.S. 301 (1974).

[3] Duroyd Manufacturing, Inc., 276 NLRB 144, 150 (1985).

[4] Fred Snow d/b/a/ Snow & sons, 134 NLRB 709 (1961); Redmond Plastics, Inc., 187 NLRB 487 (1970); Research Management Corp., 302 NLRB 627, 638 (1991).

[5] Jerr-Dan Corp., 237 NLRB 302 (1978); Vincent M. Ippolito, Inc., 313 NLRB 715, 721 (1994).

[6] Trevose Family Shoe Store, 235 NLRB 1229 (1978), at note 1.

[7] In fact, at the parties' last meeting, the Employer expressly declined to verify the Union's cards through either the Employer's records or employee interviews.